

REMARKS

The Applicant appreciates the time taken by the Examiner to review the Applicant's present application. This application has been carefully reviewed in light of the Examiner's comments, including the Office Action mailed November 16, 2007. The Applicant respectfully requests reconsideration and favorable action in this case.

Summary of rejections and amendments

The Examiner rejected claims 10 and 20 under 35 U.S.C. §112, second paragraph, claims 1-20 under 35 U.S.C. §101, claims 1, 2, 4, 5, 8 and 9 under 35 U.S.C. §102(b), and claims 3, 6, 7 and 11-19 under 35 U.S.C. §103(a). The Applicant has amended claim 21. Claims 1-9, 11-19 and 21-22 are pending in the application.

Objections to claims

The Examiner objects to claims 1-9 and 21. The Examiner states that claim 1 does not end in a period and that claim 21 includes the phrase "the mapping to user", which is unclear. The Applicant respectfully points out that claim 1 already includes a period at the end of the claim, so this claim has not been further amended. Claim 21 has been amended to change "the mapping to user" to "the mapping to a user" as suggested by the Examiner. The Applicant therefore believes the Examiner's objections have been overcome.

Requirement for information

The Examiner requires that the Applicant provide copies of each publication which the Applicant authored or co-authored and which describe Kalman filters, Duncan and Horn, or inverse electrocardial mapping. The Applicant submits herewith four articles which the Applicant authored or co-authored and which include the subject matter identified by the Examiner.

Rejections under 35 U.S.C. §102

Claims 1-3, 5 and 8-9 are rejected under 35 U.S.C. §102(a) as being anticipated by "TR02-17: CAAM Department Technical Reports 2002" ("TR02-17"). The Applicant respectfully traverses this rejection.

As pointed out by the Examiner, 35 U.S.C. §102(a) states that a person shall be entitled to a patent unless "the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the

applicant for patent". It is assumed that the Examiner believes TR02-17 to be a printed publication which describes the invention and which was published prior to the Applicant's invention.

The Applicant, Keith Berrier, submits herewith a declaration (the "Berrier declaration") which states that TR02-17 was not published or available until March 27, 2003, which is after the filing date of the present application (see paragraph 5.) Even if TR02-17 could be considered to have been published as of December 2002, the invention was necessarily made before the publication of this report, as TR02-17 was written by the Applicant based upon the Applicant's invention (paragraphs 2, 3, 5.) Because TR02-17 was published no earlier than March 27, 2003 and was written after the invention was made by the Applicant, it cannot anticipate the invention under 35 U.S.C. §102(a).

Claims 1-9, 11-19 and 21-22 are rejected under 35 U.S.C. §102(a) as being anticipated by "Solving the Inverse Problem of Electrocardiography Using a Duncan and Horn Formulation of the Kalman Filter" ("Solving the Inverse Problem"). The Applicant respectfully traverses this rejection.

The Berrier declaration points out that "Solving the Inverse Problem" was confidentially submitted to IEEE Transactions on Biomedical Engineering and was not published in that journal until March of 2004 (paragraph 4.) Even if the confidential submission of the paper to the journal could be considered to have been published for the purposes of 35 U.S.C. §102(a) as of the confidential submission of the paper to the journal, such a publication would not have been before the Applicant made the invention, since the Applicant wrote the paper based upon his invention (paragraph 4.)

The Applicant also submits herewith the declarations of Dirar S. Khoury, Ph.D. and Danny C. Sorenson, Ph.D., who are identified as co-authors of "Solving the Inverse Problem". Both Dr. Khoury and Dr. Sorenson state in their respective declarations that the subject matter of the paper was conceived and developed by the Applicant, and not by Dr. Khoury or Dr. Sorenson. Therefore the claimed invention was not "known by others" before it was made by the Applicant.

For at least these reasons, "Solving the Inverse Problem" cannot anticipate the invention under 35 U.S.C. §102(a).

Rejections under 35 U.S.C. §103

Claims 4, 6-7, 11-16, 18-19 and 21-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over TR02-17. The Applicant respectfully traverses this rejection.

As explained above, TR02-17 was not published, nor was the subject matter of the report known to others before the invention thereof by the Applicant. Thus, TR02-17 is not prior art as to the invention. Consequently, TR02-17 is not sufficient to support a rejection under 35 U.S.C. §103(a). Although the Examiner does not assert that the paper, "Solving the Inverse Problem", is sufficient to support a rejection under 35 U.S.C. §103(a), the Applicant points out that this paper, similar to TR02-17, is not prior art as to the invention and therefore also fails to provide support for an obviousness rejection.

For at least these reasons, the Applicant respectfully submits that the rejection of claims 4, 6-7, 11-16, 18-19 and 21-22 under 35 U.S.C. §103(a) has been overcome.

Conclusion

The Applicant has now made an earnest attempt to place this case in condition for allowance. Other than as explicitly set forth above, this reply does not include an acquiescence to statements, assertions, assumptions, conclusions, or any combination thereof in the Office Action.

For at least the foregoing reasons, the Applicant respectfully requests allowance of all claims pending in the application. The Examiner is invited to telephone the undersigned at the number listed below for prompt action in the event any issues remain.

If any extensions of time are necessary to prevent the above referenced application from becoming abandoned, the Applicant hereby petitions for such extensions. If any fees are inadvertently omitted, or if any additional fees are required, or if any amounts have been overpaid, please appropriately charge or credit those fees to Deposit Account No. 50-3085 of the Law Offices of Mark L. Berrier.

Respectfully submitted,



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